



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 12, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jean Alejandro**
Tax Registry No. 954472
Transit Bureau District 3
Disciplinary Case No. 2017-18011

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on July 10, 2018, and was charged with the following:

DISCIPLINARY CASE NO. 2017-18011

1. Police Officer Jean Alejandro, on or about April 21, 2017, at approximately 2200, while assigned to Transit Bureau District 3 and on duty in the vicinity of the Transit Bureau District 3 stationhouse, en route to Manhattan Central Booking, New York County, abused his authority as a member of the New York City Police Department, in that he did not obtain medical treatment for Person A without sufficient legal authority.

P.G. 210-04, Page 1, Paragraph 1

**PRISONERS REQUIRING
MEDICAL PSYCHIATRIC
TREATMENT**

2. Police Officer Jean Alejandro, on or about April 21, 2017, at approximately 2200, while assigned to Transit Bureau District 3 and on duty in the vicinity of the Transit Bureau District 3 stationhouse, en route to Manhattan Central Booking, New York County, wrongfully used force, in that he used physical force, namely struck Person A about the face without police necessity.

P.G. 221-01, Page 2, Prohibition 11
P.G. 221-02, Page 2, Paragraph 11

**FORCE GUIDELINES
USE OF FORCE**

In a Memorandum dated September 28, 2018, Assistant Deputy Commissioner David S. Weisel found Police Officer Jean Alejandro Guilty of all Specifications in Disciplinary Case No. 2017-18011. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of the totality of the issues and circumstances in this matter, I deem that a period of monitoring is warranted. Therefore, Police Officer Alejandro's disciplinary penalty shall be the forfeiture of twenty-five (25) vacation days and the imposition of one (1) year dismissal probation.



James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

September 28, 2018

In the Matter of the Charges and Specifications

Case No.

- against -

2017-18011

Police Officer Jean Alejandro

Tax Registry No. 954472

Transit Bureau District 3

At: Police Headquarters
 One Police Plaza
 New York, NY 10038

Before: Honorable David S. Weisel
 Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John P. Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Jean Alejandro, on or about April 21, 2017, at approximately 2200, while assigned to Transit Bureau District 03 and on duty, in the vicinity of the Transit Bureau District 03 stationhouse en route to Manhattan Central Booking, New York County, abused his authority as a member of the New York City Police Department, in that he did not obtain medical treatment for Person A without sufficient legal authority.

P.G. 210-04, Page 1, Para. 1 – ABUSE OF AUTHORITY FAILURE TO PROVIDE MEDICAL TREATMENT

2. Police Officer Jean Alejandro, on or about April 21, 2017, at approximately 2200, while assigned to Transit Bureau District 03 and on duty, in the vicinity of the Transit Bureau District 03 stationhouse en route to Manhattan Central Booking, New York County, wrongfully used force, in that he used physical force, namely struck Person A about the face without police necessity.

P.G. 221-01, Page 2, Prohibition 11 – FORCE GUIDELINES P.G. 221-02, Page 2, Paragraph 11 – USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on July 10, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB submitted the interviews of the complainant, Person A, and an eyewitness, Person B, as evidence. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty.

FINDINGS AND ANALYSIS

Introduction

The following is a brief recitation of the undisputed facts in this case. On April 21, 2017, at approximately 1740 hours, Respondent, assigned to Transit Bureau District 3, was performing enforcement duties inside of the 163rd Street subway station when he

observed the complainant, Person A, jump over a turnstile and enter the system without paying the legal fare. Respondent arrested Person A for theft of services. Among the possessions vouchered during his arrest was an insulin injector known as a [REDACTED] (Tr. 24-26, 28, 42; CCRB Ex. 1, Person A interview transcript, pp. 3, 10-11, 21-22; CCRB Ex. 5, Respt. memo book entry, page 2).

From the arrest scene, Respondent removed Person A to the TD-3 stationhouse, located at 145th Street and St. Nicholas Avenue. Upon arriving at the stationhouse at approximately 1800 hours, Respondent presented Person A at the desk. According to the command log (CCRB Ex. 8), Person A's physical and mental condition appeared normal on arrival. After the initial appearance, Respondent lodged Person A in one of the four holding cells, and resumed processing the arrest paperwork (Tr. 27-29, 49-50; Ex. 1, pp. 3, 23, 25-27, 30-31).

Around 2150 hours, Respondent entered the holding area and removed Person A from his cell to prepare for his transport to Manhattan Central Booking (MCB), located downtown at 100 Centre Street (MCB). Around this time, Person A told Respondent that he had diabetes and wanted to go to the hospital. Respondent acknowledged Person A but told him that he was on his way to central booking. Shortly thereafter, Respondent escorted Person A out of the stationhouse and placed him in a prisoner van. From the stationhouse, Person A was transported to MCB (Tr. 31-35, 60-62; CCRB Ex. 1, pp. 4-7, 37, 40-43; Ex. 5, page 3).

While in custody, Person A was admitted into the emergency room of Bellevue Hospital on April 22, 2017, at 0152 hours. At the time of admission, Person A reported that he had been "hit in the face during his arrest," and complained of pain to the left side of his face. Hospital staff found "minor swelling" to the right side of Person A's face but

reported "low suspicion for broken facial bone." Person A was diagnosed with hyperglycemia attendant to type 1 diabetes, the kind that requires insulin treatment. After receiving medical treatment, including prescription pain medication and several units of insulin, Person A was discharged and released into police custody at 0834 hours (Ex. 1, pp. 7-8; CCRB Ex. 3, Person A medical records, pp. 1, 4, 7, 11-14).

At issue in this case, is whether Respondent failed to obtain medical treatment for the Person A. The CCRB contended that Person A complained continuously to Respondent and other officers that he was a diabetic and needed medical treatment. The CCRB asserted that Respondent, as the arresting officer, should have arranged for Person A's direct removal from the stationhouse to a nearby hospital. Respondent conceded that he was made aware of Person A's diabetic condition but denied that he required medical treatment during the time he was held at the stationhouse. He also asserted that he was not guilty of the specification because, by transporting Person A to central booking, he was in essence obtaining medical treatment for the prisoner through the emergency medical technicians that would be examining him there. Finally, Respondent contended that the command was short-staffed (Tr. 11-12, 17-18, 38).

Also at issue, is whether Respondent wrongfully used physical force against Person A alleged that Respondent struck him in the face at the stationhouse after Person A complained about wanting to go to the hospital. Respondent denied hitting Person A at any time.

The CCRB presented a hearsay case with no live witnesses testifying. Transcripts and audio recordings of interviews with Person A, as well as with an eyewitness, Person B (CCRB Ex. 2, transcript) were entered into evidence.

Person A was interviewed on April 27, 2017. **Person A** recalled arriving at the stationhouse around 1800 hours. After he was processed by his arresting officer, **Person A** stated, he was lodged inside of holding cell three with another prisoner. **Person A** stated that he had minimal contact with the other prisoner (Ex. 1, pp. 23, 29).

Around 1930 hours, the arresting officer came to his cell and informed him that he was not being released with a desk appearance ticket, and would have to be taken downtown to Manhattan Central Booking. **Person A** asserted that he told the officer he was not feeling well and needed medical treatment for his diabetes but the officer just repeated that he was on his way to central booking and walked off (Ex. 1, pp. 3-4, 26-27, 37).

Person A claimed that he made at least ten more requests for medical treatment but no one responded. **Person A** told investigators that he felt weak and faint as time went on, and at some point, he started yelling and screaming for help from inside his cell. An officer eventually entered the holding room to check on the prisoners, at which time **Person A** requested to speak with his arresting officer. When the arresting officer responded, **Person A** renewed his request for medical treatment but the officer reiterated that he was about to go downtown (Ex. 1, pp. 3-4, 38-40).

According to **Person A**, sometime between 2100 and 2200 hours, the arresting officer opened the gate to his cell and directed him to step out. After he was handcuffed and shackled, the arresting officer had him stand outside of the holding cells a few feet away from the other prisoners. The arresting officer walked over to the security cameras, which were positioned in each of the holding cells, and flipped them to face the opposite direction. Once the cameras were flipped, the officer got in **Person A**'s face and said, "Say it one more time." **Person A** again told the officer that he was not feeling well and required

medical treatment. Person A and the officer went back and forth until the officer punched Person A underneath his left eye. Person A fell to the ground and briefly blacked out. When he regained consciousness, Person A was on the floor, stomach-side down. Person A had pain and swelling to the left side of his face (Ex. 1, pp. 5, 8, 40-47, 57-60).

Following the altercation, the arresting officer escorted Person A out of the stationhouse and placed him inside a prisoner van for transport to MCB (Ex. 1, pp. 6, 49, 61-62).

When he arrived at MCB, Person A told emergency medical personnel that he had diabetes, was not feeling well, and had facial pain and swelling. He was taken to Bellevue Hospital, where he received medical treatment for his diabetes. After he was discharged, he was taken back to MCB for arraignment (Ex. 1, pp. 6-8).

Person B was interviewed on June 9, 2017. Person B told CCRB investigators that on April 21, 2017, around 1600 hours, he was arrested and taken to the TD-3 station house. At around 2000 hours, Person B recalled, he was lodged in a holding cell with another prisoner. Shortly thereafter, he overheard the man inside of the cell yelling out for help. The man said that he was a diabetic and kept asking for medication. There were officers working at the desk right in front of the holding cell when the man was yelling but they ignored him. Person B also indicated that several officers entered and left the holding room during the time the prisoner was asking for help but no one helped (CCRB Ex. 2, Person B interview transcript, pp. 5-8, 11, 15-16, 22).

Around this time, Person B was placed in a different holding cell. Person B recalled hearing a loud noise but was unable to see what was going on inside of the cell. It sounded like a bench dropping. Person B heard the man yelling again but could not make out what he

was saying. Person B speculated that the man may have been acting out because he was being ignored (Ex. 2, pp. 29-30).

At around 2200 hours, Person B stated, the prisoners were removed from the holding cells. The man who had been yelling out for help was the last prisoner removed. After that man was taken out of his cell, he was standing near a wall underneath a camera with his hands behind his back (Ex. 2, pp. 6, 28-29, 32-33, 38-39, 46).

According to Person B, the man appeared to be talking to an officer about something but from where he was standing he could not hear what was said. The officer pushed the camera toward the ceiling and punched the man. When asked if he was certain the man had been punched, Person B answered, "Well, when the guy was in front of me I didn't know if the officer hold his hands but I, I know, I know he hit the guy." Person B told investigators that he was sure the man had been hit because he fell to the ground and had noticeable swelling underneath his left eye (Ex. 2, pp. 6, 39, 41-43, 45).

After the altercation, Person B recalled, the officer and the man had a heated exchange of words but he could not hear what was said. Person B overheard the officer tell the man, "Go and complain, [that] I hit you. All I have to tell them is that you fell" (Ex. 2, pp. 48-49).

RESPONDENT testified that Person A made no mention of his diabetes or wanting to go to the hospital until four or five hours after his arrest when he was being secured for transport to MCB around 2150 hours. Respondent testified that he told Person A he was on his way downtown and would be taken to Bellevue Hospital. Respondent acknowledged that there were several hospitals closer to the stationhouse, and that Person A had to be brought to MCB before he would be taken to Bellevue. Respondent nevertheless reasoned that it made more sense for Person A to be brought to Bellevue because the command was

short-staffed. An officer would have to accompany him to the hospital (Tr. 31-38, 61-62, 69).

Respondent further claimed that, prior to person A's removal from the stationhouse, person A became agitated, yelled out derogatory terms, attempted to pull the bench from the holding cell, and began hitting himself (Tr. 30-31).

Respondent was also questioned about the security cameras in the TD-3 stationhouse. Respondent agreed that there were cameras in the holding area of the stationhouse, but denied that he had or would ever touch or manipulate those cameras (Tr. 46)

Analysis

The first specification charges Respondent with failing to obtain medical treatment for person A in violation of Patrol Guide § 210-04 (1). This procedure states that when a prisoner in police custody requires medical treatment, members of the service are to request an ambulance and transport the prisoner to a hospital.

It is undisputed that person A was suffering from type 1 diabetes at the time of his arrest. While certain facts are in dispute, including whether person A asked for medical treatment more than once, and whether Respondent was aware that he was feeling ill and needed medication, Respondent acknowledged that by 2100 hours, person A told him that he had diabetes and wanted to go to the hospital.

By any measure, diabetes is a serious medical condition that requires constant careful self-management. Respondent conceded that he could have requested an ambulance to the stationhouse for person A's removal to a nearby hospital. His reason for not doing so was that the command was short-staffed. Instead, person A would just be taken to central booking and go to Bellevue from there.

Respondent knew or should have known that it would be several hours until Person A would be taken to Bellevue. He definitely knew that the prisoner van would not be stopping at Bellevue "on the way" from TD-3 to MCB, as he falsely assured Person A (Tr. 34, 36, 61, 67-69). In fact, Person A did not arrive at Bellevue until 0152 hours. He required several units of insulin at that point. The correct course of action for Respondent as commanded by the Patrol Guide was to call an ambulance to the stationhouse for Person A's removal to a nearby hospital. Cf. Case Nos. 2014-12100 & -105 (Sept. 10, 2015) (regardless of whether officers knew prisoner had diabetes, they should have taken him for medical treatment when he vomited in the back of the prisoner van). Thus, the Court finds Respondent Guilty of Specification No. 1.

The second specification charges Respondent with wrongfully using force in that he struck Person A in the face while he was handcuffed inside the stationhouse. For the reasons set forth below, the tribunal finds that the CCRB proved by a preponderance of the credible evidence that Respondent engaged in the alleged misconduct.

Resolution of this matter rests in large part on a determination of witness credibility. In analyzing credibility, this tribunal may consider such factors as consistency of accounts, supporting or corroborating evidence, motivation, bias, or prejudice, and the degree to which an account comports with common sense and human experience.

The Court credits Person A and Person B on the issue of whether Respondent struck Person A in the face. In a hearsay case such as this, one of the core indicators of reliability is whether the declarant would be unlikely to fabricate. Here, Person B's statement to the CCRB that he observed an instance of excessive force against another prisoner was the most convincing evidence of Respondent's guilt, as it came from an independent and candid witness. For example, there was no suggestion that Person B had prior contact with Person A.

before the date of the incident. Nor there was an indication that Person B had any animus towards Respondent or police officers in general. Furthermore, the reliability of Person B statement was bolstered by his admission that he did not actually observe the moment that Respondent struck Person A. Person B's unembellished account is that he knew that Person A had been hit by Respondent because of the sounds he heard and because Person A subsequently fell to the ground and then had facial swelling. This statement suggests that Person B was forthcoming and honest with CCRB investigators when discussing the incident in question.

Person B's statement corroborated various parts of the accounts of both Respondent and Person A in several important ways. Person B agreed with both Person A and Respondent that earlier in the evening, Person A had been acting out in the holding cell. Person B further concurred that Person A was screaming and yelling from inside of the holding cell. Person B also corroborated Person A's statement that Respondent was talking to Person A moments before Respondent allegedly struck him in the face. Person B's ability to recall these details demonstrated his accurate recollection of the facts.

The most important corroboration was Person B's statement about Respondent's manipulation of the security camera in the holding area. Person A stated in his interview that Respondent had tampered with the security camera before striking him. Person B corroborated Person A's account and confirmed that he saw Respondent push the security camera overhead in the direction of the ceiling. The corroboration of the unique detail about the camera is important. Furthermore, the turning away of a security camera can lead to few other inferences than that Respondent did not want the camera to capture his misconduct. The fact that both Person A and Person B recalled this particular act by

Respondent lends support to the veracity of their assertions that Respondent struck Person A in the face.

Person B's and Person A's statements are further corroborated by the hospital records in evidence. The stationhouse desk officer had noted Person A's appearance upon arrival there, before the alleged use of force, as apparently normal, an assessment with which Respondent agreed at trial (Tr. 66, 92-93). At the hospital, however, Person A reacted with some pain when the left side of his face was touched, and was given ketorolac (Toradol), a prescription pain medication. Hospital staff also found swelling on the right side of Person A's face. Taken together, it is more likely than not that Person A sustained facial swelling once in the holding area after being struck in the face and falling to the ground.

It is also important to underscore that Person A's statement contains certain admissions against interest that made his account more credible in general. For example, Person A admitted in his interview that he had been acting out in the holding cell. Person A stated that he was yelling and screaming to get officers' attention because he needed medical treatment. Moreover, as a whole, the tribunal found Person A's statement to be candid and not prone to exaggeration. He did not inflate the number of punches to his face or say that he was beaten by a whole group of officers. The limited nature of his account is consistent with the limited nature of his injuries.

On the other hand, Respondent was an interested witness and had a motive to engage in the charged misconduct. Person A admitted that he was acting out. It is a reasonable conclusion that this could have annoyed Respondent enough to use excessive force. Respondent's wrongful refusal to obtain medical treatment for Person A, in

violation of the Patrol Guide, makes him a less credible witness when it comes to the alleged excessive force.

Based upon the credible, relevant evidence in the record, the Court finds that the CCRB has met its burden of proof that Respondent wrongfully used excessive force against Person A. Thus, Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d. 222, 240 (1974). Respondent was appointed to the Department on July 19, 2013. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB recommended the forfeiture of 25 vacation days as a total for both specifications. This is consistent with prior recent cases and the Court agrees with the recommendation. See, e.g., Case No. 2016-15603 (Oct. 6, 2017); Case No. 2015-14319 (Mar. 28, 2017); Case No. 2015-14073 (Dec. 19, 2016) (all three cases involving the loss of 15 vacation days for punching an arrestee in the face without police necessity).

Members in previous cases have been sanctioned with the loss of 5 to 10 vacation days for failing to obtain medical treatment for a prisoner. A review of the cases demonstrates that the penalty has been raised when the prisoner was shown to have suffered from the lack of treatment. See, e.g., 2014-12100 & -105 (5 vacation days each); Case No. 84093/08 (June 17, 2010) (5 days for neglecting to get medical assistance for a prisoner with a fractured jaw; injury occurred when member used necessary force to effect the arrest); Case No. 79314/03 (Aug. 19, 2004) (10 days for failing to obtain medical

treatment for a prisoner who notified member he suffered from seizures and needed medication; after officer informed prisoner that calling ambulance would prolong stay in custody, prisoner declined treatment, but later passed out).

In this case, Respondent's failure and neglect in delaying Person A's medical treatment could have had severe ramifications for his health and indeed his life. In fact, Person A had to be treated at the hospital with several units of insulin. A higher penalty is appropriate.

Accordingly, the Court recommends that Respondent forfeit 25 vacation days as a total penalty in this matter.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JEAN ALEJANDRO
TAX REGISTRY NO. 954472
DISCIPLINARY CASE NO. 2017-18011

Respondent was appointed to the Department on July 9, 2013.

For his last two annual performance evaluations, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" in 2016, and an overall rating of 3.5 "Highly Competent/Competent" in 2015. On his 22-month probationary evaluation, Respondent was rated 3.5 "Highly Competent/Competent."

Respondent has been awarded a total of five Department Medals. Four were for Excellent Police Duty and one was for Meritorious Police Duty.

Respondent has no prior formal disciplinary record.

For your consideration.

A handwritten signature in black ink, appearing to read "David S. Weisel".

David S. Weisel
Assistant Deputy Commissioner Trials